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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 MARIA S. ALVAREZ,) Civil No. 12cv0270 AJB (DHB)
12)
13 Petitioner,) ORDER ADOPTING REPORT AND
14 v.) RECOMMENDATION; GRANTING
15 D.K. JOHNSON, Warden,) RESPONDENT'S MOTION TO DISMISS;
16 Respondent.) DENYING PETITION FOR HABEAS
CORPUS

17 Pending before the Court is Respondent's Motion to Dismiss. (Doc. No. 13). Petitioner did not
18 file an opposition to Respondent's Motion. The Court referred the matter to Magistrate Judge David H.
19 Bartick, who issued a Report and Recommendation ("R&R") recommending the Court grant Respon-
20 dent's Motion to Dismiss inasmuch as the Petition is statutorily barred by the expiration of the
21 limitations period. (R&R, Doc. No. 19). Neither party filed an objection to the R&R.

22 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district judge's
23 duties in connection with a magistrate judge's report and recommendation. The district judge must
24 "make a *de novo* determination of those portions of the report to which objection is made," and "may
25 accept, reject, or modify, in whole or in part, the finding or recommendations made by the magistrate
26 judge." 28 U.S.C. § 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989).
27 However, in the absence of timely objection(s), the Court "need only satisfy itself that there is no clear
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1 error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), Advisory
2 Committee Notes (1983); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

3 Neither party has timely filed objections to Magistrate Judge Bartick’s Report and Recommenda-
4 tion. Having reviewed the report and recommendation, the Court finds that Magistrate Judge Bartick’s
5 Report and Recommendation is thorough, well reasoned, and contains no clear error. Accordingly, the
6 Court hereby: (1) **ADOPTS** Magistrate Judge Bartick’s Report and Recommendation in its entirety; (2)
7 **GRANTS** Respondent’s Motion to Dismiss the Petition. Therefore, the Court directs that judgment be
8 entered **DENYING** the Petition for Writ of Habeas Corpus.

9 When a district court enters a final order adverse to the applicant in a habeas proceeding, it must
10 either issue or deny a certificate of appealability, which is required to appeal a final order in a habeas
11 proceeding. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability is appropriate only where the
12 petitioner makes "a substantial showing of the denial of a constitutional right." *Miller-El v. Cockrell*,
13 537 U.S. 322, 336 (2003). Under this standard, the petitioner must demonstrate that reasonable jurists
14 could debate whether the petition should have been resolved in a different manner or that the issues
15 presented were adequate to deserve encouragement to proceed further. 28 U.S.C. § 2253; *Slack v.*
16 *McDaniel*, 529 U.S. 473, 474 (2000). Here, the Court finds that reasonable jurists could not debate
17 whether Respondent’s motion to dismiss should have been resolved differently and therefore **DENIES**
18 the certificate of appealability.

19 IT IS SO ORDERED.

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21 DATED: January 2, 2013

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23 Hon. Anthony J. Battaglia
24 U.S. District Judge
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